



**STATE OF HAWAII  
DEPARTMENT OF HEALTH  
FAMILY HEALTH SERVICES DIVISION**

LEGAL AD DATE: March 25, 2010

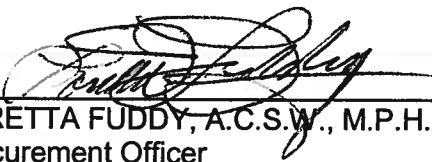
**INVITATION FOR BIDS  
No. IFB-FHSD-10-001**

**SEALED OFFERS  
FOR  
FURNISHING JANITORIAL SERVICES FOR THE  
WILCOX ANNEX BUILDING, WILCOX BUILDING AND  
COTTAGE 1 (HALE EKAHI)  
DEPARTMENT OF HEALTH,  
FAMILY HEALTH SERVICES DIVISION**

WILL BE RECEIVED UP TO AND OPENED AT 2:00 P.M. (HST) ON

APRIL 20, 2010

AT THE DEPARTMENT OF HEALTH, FAMILY HEALTH SERVICES DIVISION, 3652 KILAUEA AVENUE, HONOLULU, HAWAII 96816. DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO GORDON TAKAKI, TELEPHONE (808) 733-8365, FACSIMILE (808) 733-8369 OR E-MAIL AT [gordon.takaki@doh.hawaii.gov](mailto:gordon.takaki@doh.hawaii.gov).

  
LORETTA FUDDY, A.C.S.W., M.P.H.  
Procurement Officer

\_\_\_\_\_  
Name of Company

If interested in responding to this solicitation, Offeror is advised to register its company by fax or e-mail for this specific solicitation. If Offeror does not register its company, Offeror will not receive addenda, if any, and its offer may be rejected and not considered for award. Please provide name of company, mailing address, name of contact person, telephone number, facsimile number, e-mail address, and solicitation number.

**Submit FAX or E-Mail to:**

**FAX No.:**

**(808) 733-8369**

**E-Mail Address:**

**[gordon.takaki@doh.hawaii.gov](mailto:gordon.takaki@doh.hawaii.gov)**

JANITORIAL SERVICES FOR THE WILCOX ANNEX BUILDING,  
WILCOX BUILDING AND COTTAGE 1, DEPARTMENT OF HEALTH  
IFB-FHSD-10-001

Procurement Officer  
Department of Health, Family Health Services Division  
3652 Kilauea Avenue  
Honolulu, Hawaii 96816

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions of IFB No. FHSD-10-001, and the General Conditions, form AG-008 (04/15/2009) included by reference and made a part hereof; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof.

It is understood and agreed that the State reserves the right to accept or reject any or all offers, and to waive any defect in any offer when, in the opinion of the State, such rejection is in the best interest of the State.

The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Offeror is:

☐ Sole Proprietor    ☐ Partnership    ☐ \*Corporation    ☐ Joint Venture  
☐ Other \_\_\_\_\_

\*State of incorporation: \_\_\_\_\_

Federal I.D. No.: \_\_\_\_\_

Hawaii General Excise Tax License I.D. No.: \_\_\_\_\_

Payment address (other than street address below): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Respectfully submitted:

Date: \_\_\_\_\_

(x) \_\_\_\_\_

Authorized (Original) Signature

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

\_\_\_\_\_  
Name and Title (Please Type or Print)

E-mail Address: \_\_\_\_\_

\*\* \_\_\_\_\_

**Exact Legal Name of Company (Offeror)**

\*\*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed:

The following offer is submitted to furnish Janitorial Services at Wilcox Annex Building, Wilcox Building and Cottage 1 (Hale Ekahi), State Department of Health, Family Health Services Division:

<u>Description</u>	<u>No. of Months</u>	<u>Bid Price Per Month</u>	<u>Total Bid Price</u>
Janitorial services performed as specified herein	12	\$ _____	\$ _____

For work performed under this contract, contractor shall pay his employees wages equal to or better than Janitor I public employee positions. (Refer to Special Provisions, Statutory Requirements of Section 103-55, Hawaii Revised Statutes).

Offeror shall complete the following for State Procurement Office information and evaluation.

	<u>No. of Workers</u>	x	<u>Estimated Labor Hours</u>	x	<u>Wage Rate</u>	=	<u>Bid Price</u>
Janitor 1 (BC 01)	_____		_____ hours/year		\$15.76*		\$ _____
Other Costs	xxxxxxx		xxxxxxx		xxxxxxx		\$ _____
<b>Total Annual Bid Price:</b>							<b>\$ _____ **</b>

\*Effective 07/01/07

\*\*Total Bid Price should be the same as Total Annual Bid Price.

**Bidder shall furnish the following information.**

1. Number of months providing janitorial services for commercial businesses and government agencies in Hawaii (minimum of 12 months): \_\_\_\_\_
2. Percentage of Total Bid Price representing employee wages: \_\_\_\_\_%
3. Offeror's Business Address: \_\_\_\_\_  
\_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone No.: Office \_\_\_\_\_  
Cellular \_\_\_\_\_  
E-mail address: \_\_\_\_\_

Offeror \_\_\_\_\_

Name of Company

4. Insurance Coverages:

	<u>Carrier</u>	<u>Policy No.</u>	<u>Agent</u>
Commercial General Liability:	_____	_____	_____
Automobile Insurance:	_____	_____	_____
Worker's Compensation:	_____	_____	_____
Temporary Disability:	_____	_____	_____
Prepaid Health Care:	_____	_____	_____
Unemployment Insurance: State of Hawaii I.D. No.	_____	_____	_____

5. Current Contracts: Offeror shall list government agencies and private sector contracts which offeror is currently working on:

<u>Name</u>	<u>Address</u>	<u>Contact</u>	<u>Telephone No.</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6. Prior Contracts: Offeror shall list government agencies and private sector contracts which offeror has provided prior to this date:

<u>Name</u>	<u>Address</u>	<u>Contact</u>	<u>Telephone No.</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Offeror \_\_\_\_\_  
Name of Company

**CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT**  
**(Reference §3-122-112, HAR)**

**Reference:** \_\_\_\_\_ **IFB-FHSD-10-001**  
(Contract Number) (IFB/RFP Number)

\_\_\_\_\_ affirms it is in  
(Company Name)  
compliance with all laws, as applicable, governing doing business in the State of Hawaii to include  
the following:

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker's Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

maintains a "Certificate of Good Standing" from the Department of Commerce and Consumer Affairs, Business Registration Division.

Moreover, \_\_\_\_\_  
(Company Name)

acknowledges that making a false statement shall cause its suspension and may cause its debarment from future awards of contracts.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Title:** \_\_\_\_\_

Date: \_\_\_\_\_

**WAGE CERTIFICATE  
FOR SERVICE CONTRACTS  
(See Special Provisions)**

Subject: IFB No.: IFB-FHSD-10-001

Title of IFB/RFP: Janitorial Services for Wilcox Annex Building, Wilcox Building and Cottage 1,  
State Department of Health

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS), I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with; and
2. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work, with the exception of professional, managerial, supervisory, and clerical personnel who are not covered by Section 103-55, HRS.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds, if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wage required by section 103-55, HRS.

Offeror \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## **SPECIFICATIONS**

### **SCOPE OF WORK**

The CONTRACTOR shall furnish all labor and supervision to satisfactorily perform janitorial services at the following buildings of the Family Health Services Division ("FHSD"), Department of Health: Wilcox Annex Building; Wilcox Building; and Cottage 1 (Hale Ekahi).

The STATE shall furnish toilet tissue, toilet seat covers, hand towels, hand soap, light bulbs and trash liners; however, the CONTRACTOR shall be responsible for replenishing these supplies in the proper receptacles or fixtures as required. CONTRACTOR shall be responsible to notify the Contract Administrator as reordering becomes necessary.

The STATE shall also furnish all other cleaning supplies and equipment such as brooms, mops, vacuum cleaner, sponges, brushes, dusters, disinfectants, cleaning detergents and soaps, ammonia water and any other supplies mutually approved in writing by the STATE and CONTRACTOR.

### **LOCATION AND AREA**

The CONTRACTOR shall provide janitorial services to the building locations and areas listed below:

Wilcox Annex, 741 Sunset Avenue, Honolulu, Hawaii, is a six thousand, eight hundred eighty four (6,884) square foot single story old cafeteria building converted into an office building. The area to be cleaned includes an office area, kitchen (including the kitchen sink), patio and hallways fronting the office and storeroom. The building has three (3) shared restrooms with a total of three (3) toilets and three (3) basins.

Wilcox Building, 741-A Sunset Avenue, Honolulu, Hawaii, is a two-story old nurses' dormitory converted into an office building. The area to be cleaned covers fifteen thousand, six hundred sixteen (15,616) square feet and includes twenty-four (24) offices, a computer server room, a kitchen (including the kitchen sink), two (2) copy machine rooms, a front patio, a rear patio, hallways fronting the offices, a basement and a storeroom. The building's first floor has one (1) women's restroom, one (1) men's restroom, one (1) shared restroom, and two (2) private restrooms with a total of five (5) toilets and seven (7) basins. The building's second floor has two (2) shared restrooms and three (3) private restrooms with a total of five (5) toilets and four (4) basins. The entire building has concrete flooring with the exception of one (1) carpeted office.

Cottage 1 (Hale Ekahi), 3652 Kilauea Avenue, Honolulu, Hawaii, is a two-story, two thousand, seven hundred thirty-three (2,733) square foot wooden structure with tile floors and two (2) restrooms.

Visitor and employee parking areas to all three (3) buildings, as well as surrounding lawns and sidewalks where applicable.

### **DESCRIPTION OF WORK**

Services shall be provided with a minimum of interruption to the regular course of operation at the worksite. CONTRACTOR must maintain a regular systematic inspection of the premises and shall perform all work in a professional manner.

Janitorial services shall be performed daily, except on weekends, STATE furlough days, and STATE holidays, between 7:45 a.m. and 4:30 p.m. Worker(s) will be required to report to the Contract Administrator every morning prior to commencement of work, and also at the end of the work day before leaving the premises. Eight (8) hours of service shall be provided each day as required.

The CONTRACTOR shall perform the following services:

**I. WILCOX ANNEX AND WILCOX BUILDING**

**A. Daily**

1. Clean and disinfect toilets, basins, handles and restroom doorknobs.
2. Replenish all restroom supplies.
3. Sweep and wet mop bathroom floors with disinfectant.
4. Sweep floor, clean sinks, and clean countertops and tables in kitchen/dining areas after 2:00 p.m.
5. Empty and clean trash containers between 1:30 p.m. to 3:30 p.m.
6. Scrub water fountains (as needed).
7. Sweep patio, and clean patio tables and chairs.

**B. Weekly**

**1. Mondays**

- (a) Sweep and wet mop Wilcox Annex (includes hallways).
- (b) Dust mop all smooth floors with exception of 1.B.1.a. above (Wilcox Annex).
- (c) Hose outside walkways fronting Wilcox Building.
- (d) Water plants in hallways and rear patio of Wilcox Building.
- (e) Turn on water sprinklers to irrigate lawn in the morning for approximately thirty (30) minutes.

**2. Wednesdays**

- (a) Sweep and wet mop second floor of Wilcox Building (includes hallways).
- (b) Dust mop all smooth floors with exception of 1.B.2.a. above (Wilcox Building).
- (c) Vacuum carpeted areas. Spot clean to remove all stains from carpeted area.



- (d) Sweep all three (3) stairwells, front staircase and walkways (Wilcox Building).
- 3. Fridays
  - (a) Sweep and wet mop top floor of Wilcox Building (includes hallways).
- Dust mop all smooth floors with exception of 1.B.3.a. above (Wilcox Building).
- (a) Dust all accessories and exposed surfaces within reach from floor.
- (b) Turn on water sprinklers to irrigate lawn in the morning for approximately thirty (30) minutes.
- (c) Water plants in hallways and rear patio of Wilcox Building.

## **II. COTTAGE I (Hale Ekahi)**

### **A. Daily**

- 1. Sweep floor, clean sink, and clean countertop and table in kitchen/dining area after 2:00 p.m.
- 2. Empty and clean trash containers in kitchen area after 2:00 p.m.
- 3. Clean and disinfect toilets, basins, handles and restroom doorknobs.

### **B. Weekly**

- 1. Tuesdays
  - (a) Sweep and wet mop entire building (includes hallways).
  - (b) Replenish all restroom supplies.
  - (c) Empty trash containers between 1:30 p.m. to 3:30 p.m.
- 2. Thursdays
  - (a) Replenish all restroom supplies.
  - (b) Empty trash containers between 1:30 p.m. to 3:30 p.m.
  - (c) Dust mop all smooth floors.
  - (d) Dust all accessible and exposed surfaces within reach from floor.

### **III. WILCOX ANNEX, WILCOX BUILDING AND COTTAGE 1 (Hale Ekahi)**

#### **A. Once a Month**

1. Wipe door louvers, window louvers and screens with damp cloth.
2. Vacuum or clean by other means all window sills.
3. Vacuum or clean by other means air vents in restrooms.
4. Sweep and wet mop basement (Wilcox Building).

#### **B. Once Every Three (3) Months**

Vacuum all window air conditioner vents and filters to remove accumulated dust.

#### **C. Periodically, if and when necessary**

1. Replace burnt-out light bulbs (including outside floodlights) and report defective lights.
2. Spot sweep and wet mop hallways and offices.
3. Spot clean desks, tables, shelves and walls.
4. Assist in carrying or moving heavy articles.
5. Report any repair and maintenance requirements, such as humming fluorescent light fixtures, broken or defective switches and outlets, leaky faucets and drains, plugged or slow drainage in basins or toilets, toilet running, any vandalism, etc., to the Contract Administrator for corrective action.
6. Pick up leaves on lawn and sidewalks fronting Wilcox Building and dispose in appropriate trash receptacles.
7. Maintain sufficient levels of janitorial supplies by informing designated staff when supplies and equipment need to be ordered or re-ordered.
8. Re-line trash containers located in the visitor parking area with disposable trash bags.
9. Vacuum offices, kitchen, bathrooms, and hallways as needed.
10. Keep visitor and employee parking areas free and clear of debris.

### **TRASH AND TRASH CONTAINERS**

Trash shall be removed from the building and deposited in the proper receptacles designated by the Contract Administrator. Special care shall be given to food and beverage garbage; certain containers shall be designated for garbage only and these receptacles must be sprayed with ammonia water before being hauled out of the building.

## **CONTRACTOR'S RESPONSIBILITY**

It shall be the CONTRACTOR'S responsibility to provide and utilize appropriate safety signs, barricades and any other safety device(s) during the performance of service. These safety devices shall be set up by the CONTRACTOR whenever employees are performing services such as window cleaning, shampooing carpets, wet mopping or waxing floors, replacing diffusers, and whenever a ladder is being used. Safety devices shall be set up in a manner to restrict access to the area, to prevent accidents to office personnel and to the general public. Safety signs should include international symbols, instead of or in addition to, English, when possible.

The CONTRACTOR shall adhere to all provisions of the Hazard Communication Standard pertaining to the use of hazardous chemicals at the job site and as administered by the Department of Occupational Safety and Health ("DOSH"), State of Hawaii. This requirement includes but is not limited to the following:

1. Caution signs shall be provided and displayed at each location where there is exposure to toxic materials or harmful physical agents. Labels shall be affixed to all toxic materials or harmful physical agents, or their containers, warning of their potential danger.
2. CONTRACTOR shall post information (Material Safety Data Sheet) prominently regarding hazards posed by toxic materials or harmful physical agents in the employer's workplace. The information shall include suitable precautions, relevant symptoms and emergency treatment in case of overexposure.
3. CONTRACTOR'S employees required to handle or use poisons, caustics and other harmful substances shall be instructed regarding safe handling and use, and be made aware of the potential hazards, and of personal hygiene and personal protective measures required.

The CONTRACTOR'S employees shall keep confidential all information seen or heard during the course of their work. It is the CONTRACTOR'S responsibility to notify the Contract Administrator if it learns of a breach in confidentiality.

## **SPECIAL CONDITIONS**

### **TERMS AND ACRONYMS USED HEREIN**

Procurement Officer	=	The contracting officer for the Department of Health
DOH	=	Department of Health
SPO	=	State Procurement Office of the State of Hawaii, Located at 1151 Punchbowl Street, Room 416, Honolulu, Hawaii 96813; P.O. Box 119, Honolulu, Hawaii 96810-0119
State	=	All agencies, including schools participating in this agreement
Bidder or Offeror	=	Any individual, partnership, firm, corporation, joint venture, or other entity submitting directly or through a duly authorized representative or agent, a bid for the good, service, or construction contemplated.
CA	=	Contract Administrator
HRS	=	Hawaii Revised Statutes
HAR	=	Hawaii Administrative Rules
IFB	=	Invitation for Bids
RFP	=	Request for Proposals
GET	=	General Excise Tax
GTC	=	General Terms and Conditions dated April 15, 2009

### **SCOPE**

The furnishing and delivery of janitorial services for the Wilcox Annex Building, Wilcox Building and Cottage 1 (Hale Ekahi), Department of Health (DOH), Family Health Services Division (FHSD) shall be in accordance with these Specifications and Special Conditions of IFB No. FHSD-10-001. The State's General Conditions, Form AG-008 (4/15/2009), attached hereto and made a part hereof or a revised General Conditions version and applicable contract forms, although not physically attached, are included by reference and made a part hereof. Copies of these documents can be obtained by making a request to the Procurement Officer.

### **AUTHORITY**

This IFB is issued under the provisions of the State Procurement Code (HRS Chapter 103D) and the State Procurement Office's applicable Directives, Circulars and administrative rules. All prospective Offerors are charged with the presumptive knowledge of all applicable legal authorities. Submission of a valid executed offer by any prospective Offeror shall constitute admission of such knowledge on the part of such prospective Offeror.

Any Agreement arising out of this offer is subject to the approval of the State Department of the Attorney General, as to form, and to all further approvals as required by statute, administrative rule, order, or other directive.

### **DOWNLOADED SOLICITATION**

Offeror is advised that if interested in responding to this solicitation, Offeror may choose to submit its offer on a downloaded document **provided** Offeror registers its company by fax or e-mail for this specific solicitation. If Offeror does not register its company, Offeror will not receive addenda, if any, and its offer may be rejected and not considered for award.

## PROCUREMENT OFFICER

The Procurement Officer is responsible for administering and overseeing the Contract, including monitoring and assessing contractor performance. The Procurement Officer for the Contract is:

Loretta Fuddy, A.C.S.W., M.P.H.
Chief, Family Health Services Division
1250 Punchbowl Street, Room 216
Honolulu, Hawaii 96813
Telephone: (808) 586-9021
Facsimile: (808) 586-9303

## ISSUING OFFICER

The individuals listed below are the **sole** point of contact from the date of release of this IFB until the selection of the Offeror to which a Contract will be awarded:

Gordon Takaki
Public Health Administrative Officer V
3652 Kilauea Avenue
Honolulu, Hawaii 96816
Telephone: (808) 733-8365
Facsimile: (808) 733-8369

## CONTRACT ADMINISTRATOR

For the purpose of this contract, the Contract Administrator is Gordon Takaki, or his/her designated representative, telephone (808) 733-8365, facsimile (808) 733-8369.

## TERM OF CONTRACT

Offeror shall enter into a contract for furnishing services for a twelve-month (12) period commencing from the official date on the Notice to Proceed but no earlier than July 1, 2010. Unless terminated, contract shall be extended for not more than five (5) additional twelve-month periods or portions thereof, without the necessity of rebidding, upon mutual agreement in writing, at least three (3) months prior to expiration, provided that the contract price for the extended period shall remain the same or lower than the initial bid price, except as provided for herein.

The State may terminate the extended contract period at any time in accordance with the General Conditions, item number 14.

## BIDDER QUALIFICATION

In addition to meeting the legal and other requirements to this IFB, bidder must meet these bidder qualifications requirements to be considered for award.

1. Offeror shall have at least twelve (12) months experience operating a janitorial maintenance business in Hawaii prior to bid opening. Bidder shall indicate on the Offer Form the length of time in operation, business address, telephone number and contact person.
2. Offeror shall have an office located on the island of Oahu from where he conducts business and where he will be accessible to telephone calls for complaints or requests that need immediate attention. Bidder shall be able to respond verbally within two (2) hours from the State's call/request.

The Offeror, at no extra cost, shall provide additional background information and documentation on any of the above requirements if requested by the State.

### **RESPONSIBILITY OF OFFERORS**

Offeror is advised that if awarded a contract under this solicitation, Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of §103D-310(c), HRS:

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers' compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

Refer to the Award of Contract provision herein for instructions on furnishing the documents that are acceptable to the State as proof of compliance with the above-mentioned requirements.

### **CERTIFICATION OF INDEPENDENT COST DETERMINATION**

By submission of a bid in response to this IFB, bidder certifies as follows:

1. The costs in this IFB have been arrived at independently, without consultation, communication, or agreement with any other bidder, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the cost which have been quoted in this IFB have not been knowingly disclosed by the bidder prior to award, directly or indirectly, to any other bidder or competitor prior to the award of the contract.
3. No other attempt has been made or will be made by the bidder to indicate any other person or firm to submit or not to submit for the purpose of restricting competition.

### **SITE INSPECTION**

Prior to submittal of an offer, Offerors may inspect the location to thoroughly familiarize themselves with existing conditions, rules and regulations, and the extent and nature of work to be performed. Offeror inspection is not mandatory, however, submission of an offer shall be evidence that the Offeror understands the scope of the project and shall comply with specifications herein, if awarded the contract. No additional compensation, subsequent to bid

opening, shall be allowed by reason of any misunderstanding or error regarding site conditions or work to be performed.

Appointment to inspect the delivery areas may be made by contacting the Issuing Officer between the hours of 8:00 a.m. to 3:00 p.m., except on weekends, State furlough days, and State holidays.

## **INQUIRIES**

All inquiries regarding any item in this IFB shall be in writing and received by the Issuing Officer by April 9, 2010, 2:00 p.m. (noon, HST). Only those written inquiries received by the deadline shall be responded to. An Addendum shall be issued to provide offerors with a list of inquiries and responses. The State's responses shall not be construed to make any changes to the IFB unless otherwise revised by an addendum.

## **BID PREPARATION**

**Offer Form, Page OF-1.** Offeror is requested to submit its offer using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate space on Offer Form, page OF-1. Failure to do so may delay proper execution of the contract.

The authorized signature on the first page of the Offer Form shall be an original signature in ink. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

**Bid Quotation.** Bid price shall be all inclusive, and include, but not limited to, all applicable taxes and expenses incurred to provide services specified herein.

**Tax Liability.** Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and vendors are advised that they are liable for the Hawaii General Excise tax (GET) at the current rate for each county. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

**Taxpayer Preference.** For evaluation purposes, pursuant to §103D-1008, HRS, the Bidder's tax-exempt price offer submitted in response to an IFB shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

**Insurance.** Bidder shall provide insurance information as requested on the appropriate Offer Form page. Further, bidder shall provide insurance coverage for contents in accordance with the attached Specifications.

**References.** Bidder shall list as references, companies for whom bidder has provided or is currently providing on a regular basis services similar in nature and in volume to services specified herein. The State reserves the right to contact the references to inquire about bidder's past performance.

### **Confidential Information.**

Offerors shall designate those portions of their offer that contain trade secrets or other proprietary data that are to remain confidential subject to Hawaii Administrative Rules (HAR) §§ 3-122-21(a)(7) and 3-122-30 (c) and (d). Material designated as confidential shall be readily separable from the offer in order to facilitate public inspection of the non-confidential portion of the offer. Prices, makes and models, or catalogue number of items offered, deliveries and terms of payment, shall be publicly available at the time of opening regardless of any designation to the contrary.

### **SUBMISSION OF OFFER**

Offers shall be received at the Department of Health, Family Health Services Division, 3652 Kilauea Avenue, Honolulu, Hawaii 96816, no later than the date and time stated on the cover page of the IFB. Timely receipt of offers shall be evidenced by the date and time registered by the Family Health Services Division's clock and written receipt. Offers received after the deadline shall be returned unopened.

### **STATUTORY REQUIREMENTS OF SECTION 103-55, HRS**

Offeror shall complete and submit the attached wage certification by which offeror certifies that the services required will be performed pursuant to Section 103-55, HRS.

Offerors are advised that Section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Offerors are further advised that in the event of an increase in wage rates to public employees performing similar work during the contract period, Contractor will be obliged to provide wages no less than those increased wages.

Contractor shall be further obliged to notify its employees performing work under this contract of the provisions of Section 103-55, HRS, and of the current wage rate for public employees performing similar work. Contractor may meet this obligation by posting a notice to this effect in the Contractor's place of business accessible to all employees, or Contractor may include such notice with each paycheck or pay envelope furnished to the employee.

To assist the bidder in determining whether the work his employees are to perform under this contract is similar to that performed by public employees, attached are class and minimum qualification specifications for Security Officer positions. Effective March 1, 2009, the basic hourly wages paid to the State positions are as follows:

<u>Class</u>	<u>Hourly Rate</u>
Janitor I (BC01)	\$15.76/hour

Accordingly, bidder should consider the aforementioned wage rates when preparing his/her quote.

### **PRICE ADJUSTMENT DUE TO WAGE INCREASE TO STATE EMPLOYEES**

1. Contract price adjustment shall be considered:
  - a. Only upon request by the Contractor accompanied by proof satisfactory to the State that its employees have been paid comparable wages to State employees; and



- b. Only if there is a wage increase to public employees performing comparable work; and
- c. Only for the contract period in which the price adjustment request is submitted (current contract period only).

Example:

Original contract period: March 7, 2003 to March 6, 2004  
 Extension period: March 7, 2004 to March 6, 2005

The option to extend the original contract is exercised for the period March 7, 2004 to March 6, 2005. On March 1, 2005, the State announces a pay raise retroactive to July 1, 2003 and the Contractor soon thereafter submits a request of modification is issued accompanied by acceptable documentation. A contract modification is issued to reflect a price adjustment for the current period of the contract, March 7, 2004 to March 6, 2005. Note that the price adjustment is not applied retroactively to July 1, 2003 since the condition of this contract allows price adjustment to the current contract period only.

2. Price adjustment based on the actual dollar increase per hour per State employee shall be calculated as follows:

- a. Bid Price/Hr/Officer (A) = (A) for example = \$15.00/hr
- b. Current Hourly Wage Rate (B) = (B) for example = \$11.00/hr
- c. New Hourly Wage Rate paid to State Employees (C) = (C) for example = \$11.50/hr
- d. Hourly Wage Increase to State employees (D) = (D) for example = \$.50/hr
- e. Adjusted Bid Price/Hr/Officer (E) = (A) + (D), or  
 $\$15.00 + \$.50 = \$15.50/\text{hr}$

3. In addition to the actual dollar amount of wage increase, Contractor may apply for the percentage (%) fringe benefits required by Statute. However, the resulting fringe benefit percentage shall only be applicable to the actual dollar amount of increase and the State shall only consider those benefits that are required by contract and are directly affected by the wage increase.

If request includes adjustment for wage related fringe benefits, Contractor must provide support documentation and an itemized percentage breakdown of the fringe benefits being paid.

The State has determined that the applicable fringe benefits for wage related price adjustments shall be limited to: 1) Federal Old Age Benefits, 2) Worker Compensation, 3) Temporary Disability Insurance, and 4) Unemployment Insurance. Based on past experience, it has been determined that the percentage increase be set at 16%. If Contractor is able to document that its percent for fringe is higher than 16%, the State will review and consider Contractor's claim.

The following method of calculation shall be applied for the fringe benefits:

- a. 16% for Allowable Fringe Benefits
  - b. \$ Adjusted for Allowable Fringe Benefits (F) = (D) x (.16) = F, or  
$$\$ .50 \times .16 = \$ .08$$
  - c. Adjusted Bid Price/Hr/Officer + Fringe Benefits = (E) + (F), or  
$$\$15.50 + \$ .08 =$$
$$\$15.58$$
4. After the contract modification for the increase is issued by the State, but before payment of an increase is made on the portion of the current contract period already performed, the Contractor shall show proof that its employees were given the retroactive wage increase.

### **AWARD OF CONTRACT**

**Method of Award.** Award, if made, shall be to the responsive, responsible Offeror submitting the lowest offer.

**Responsibility of Lowest Responsive Bidder.** Reference §103D-310(c), HRS. If compliance documents have not been submitted to the DOH prior to award, the lowest responsive and responsible offeror shall produce documents to the Procurement Officer to demonstrate compliance with this section.

**HRS Chapter 237 tax clearance requirement for award.** Instructions are as follows:

Pursuant to §103D-328, HRS, lowest responsive Offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is reviewed by the Deputy Attorney General who will review and sign the final document.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX TAX CLEARANCE APPLICATION Form A-6 (Rev. 2003) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): [http://www.hawaii.gov/tax/a1\\_1alphalist.htm](http://www.hawaii.gov/tax/a1_1alphalist.htm)

DOTAX Forms by Fax/Mail: (808) 587-7572  
1-800-222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX: (808) 587-1488  
IRS: (808) 539-1573

The application for the clearance is the responsibility of the Offeror, and must be submitted directly to the DOTAX or IRS and not to the DOH. However, the tax clearance certificate shall be submitted to the DOH.

**HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award.**

Instructions are as follows:

Pursuant to §103D-310(c), HRS, the lowest responsive Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is reviewed by the Deputy Attorney General. A photocopy of the certificate is acceptable to the DOH.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR*, Form LIR#27 which is available at <http://hawaii.gov/labor/formsall.shtml> or at the neighbor island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to the DOH.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to the DOH. However, the certificate shall be submitted to the DOH.

**Compliance with Section 103D-310(c), HRS, for an entity doing business in the State.** The lowest responsive Offeror shall be required to submit a *CERTIFICATE OF GOOD STANDING* (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from date of issue and must be valid on the date it is reviewed by the Deputy Attorney General. A photocopy of the certificate is acceptable to the DOH.

To obtain the Certificate, the Offeror must first be registered with the BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate.

On-line business registration and the Certificate are available at [www.BusinessRegistrations.com](http://www.BusinessRegistrations.com). To register or to obtain the Certificate by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

**Final Payment Requirements.** Contractor is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract. In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), attached, will be required for final payment. A copy of the Form is also available at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Select "Forms for Vendors/Contractors" from the Procurement of Goods, Services, & Construction - Chapter 103D, HRS, menu.

**Hawaii Compliance Express.** Alternately, instead of separately applying for these certificates at the various state agencies, vendors may choose to use the Hawaii Compliance Express (HCE), which allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of §103D-310(c), HRS, shall

be accepted for contracting and final payment purposes. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$12.00 to the Hawaii Information Consortium, LLC (HIC). Vendors choosing not to participate in the HCE program will be required to provide the paper certificates as instructed in the sections previous to this one.

**Timely Submission of all Certificates.** The above certificates should be applied for and submitted to the DOH as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

## **ACCEPTANCE OF OFFER**

Acceptance of Offeror, if any, will be made within sixty (60) calendar days after the opening of Offerors, and the prices quoted by the Offeror shall remain firm for the sixty day period or a longer period as may be allowed upon mutual agreement of the parties.

## **CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS**

It has been determined that funds for this contract have been appropriated by a legislative body.

Therefore, Offeror, if awarded a contract in response to this solicitation, agrees to comply with Section 11-205.5, HRS, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body.

## **CONTRACT EXECUTION**

The State shall forward a formal contract to the successful Offeror for execution. The contract shall be signed by the successful Offeror and returned within ten (10) days after receipt by the Offeror or as may be otherwise allowed by the Procurement Officer. **NO PERFORMANCE OR PAYMENT BONDS ARE REQUIRED FOR THIS CONTRACT.**

If the option(s) to extend for the twelve-month period is mutually agreed upon, Contractor shall be required to execute a supplement to the contract.

The Contractor or the State may terminate the extended contract period at any time upon three (3) months prior written notice.

## **NOTICE TO PROCEED**

Work will commence on the official commencement date specified on the Notice to Proceed.

No work is to be undertaken by the Contractor prior to the official commencement date on the Notice to Proceed. The State is not liable for any work, contract, costs, expenses, loss of profits, or any damage whatsoever incurred by the Contractor prior to the work start date.

## **LIABILITY INSURANCE**

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or by an subcontractor or

anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the Contractor providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, Contractor may require subcontractor to provide its own insurance which meets the requirements herein. It is understood that a subcontractor's insurance policy or policies are in addition to the Contractor's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor, including its subcontractor(s) where appropriate.

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability (occurrence form)	\$1,000,000 per occurrence for bodily injury and property damage and \$2,000,000 in aggregate
Basic Motor Vehicle Insurance And Liability Policies	\$1,000,000 per accident

Each insurance policy required by this contract, including a subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Department of Health, Family Health Services Division, 3652 Kilauea Avenue, Honolulu, Hawaii 96813."
2. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements.

Upon Contractor's execution of the contract, the Contractor agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by the State, Contractor shall be responsible for furnishing a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default under this contract, entitling the State to exercise any or all of the remedies provided in this contract for a default of the Contractor.

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract.

Notwithstanding said policy or policies of insurance, Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

## **SUBCONTRACTORS**

The Contractor shall not delegate any duties listed in this IFB to any subcontractor, unless the Contract Administrator has given prior written approval.

## **INSPECTION**

The State retains the general right of inspection by a designated representative in order to judge, whether in the State's opinion, such work is being performed by the Contractor in accordance with terms of this bid proposal.

## **INVOICING**

Invoices shall be payable upon certification by the Contract Administrator that the Contractor has satisfactorily performed the required services.

Contractor shall submit original and three copies of the invoice to the following address:

Department of Health, Family Health Services Division  
3652 Kilauea Avenue  
Honolulu, Hawaii 96816

Invoice shall reference both the contract number and the IFB number.

A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract. In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), attached, will be required for final payment. A copy of the form is also available at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Select "Forms for Vendors/Contractors" from the Procurement of Goods, Services, & Construction – Chapter 103D, HRS, menu. Alternately, a "Certificate of Vendor Compliance," issued through the Hawaii Compliance Express system, shall be acceptable for final payment requirements.

## **PAYMENT**

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any bid submitted with a condition requiring payment within a shorter period. Further, the State will reject any bid submitted with a condition requiring interest payments greater than that allowed by §103-10, HRS, as amended.

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which requires payment within a shorter period or interest payment not in conformance with statute.

## **REMOVAL OF CONTRACTOR'S EMPLOYEES**

Contractor agrees to remove any of its employees from services rendered and to be rendered to

the State, upon request in writing by the Procurement Officer.

### **LIQUIDATED DAMAGES**

Refer to the General Conditions. Liquidated damages is fixed at the sum of TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) per each and every calendar day per location per violation the Contractor fails to perform in whole or in part any of his obligations specified herein. Liquidated damages, if assessed, may be deducted from any payments due or to become due to the Contractor.

### **RIGHTS AND REMEDIES FOR DEFAULT**

In the event the Contractor fails, refuses, or neglects to perform the services in accordance with the requirements of these Special Conditions, the Specifications, and General Conditions herein, in addition to any other recourse allowed by law, the State reserves the right to purchase in the open market, a corresponding quantity of the services specified herein and to deduct from any moneys due or that may thereafter become due the Contractor, the difference between the price named in the contract and the actual cost thereof to the State. In case any money due the Contractor is insufficient for said purpose, the Contractor shall pay the difference upon demand by the State. The State may also utilize all other remedies provided by law.

### **PROTEST**

A protest shall be submitted in writing within five (5) working days after the posting of the award as listed below; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers.

The notice of award letter(s), if any, resulting from this solicitation shall be posted on the Procurement Reporting System, which is available on the SPO website:  
<http://www.hawaii.gov/spo2/source/>.

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Procurement Officer, Department of Health, 1250 Punchbowl Street, Room 216, Honolulu, Hawaii 96813.

### **ADDITIONS, AMENDMENTS AND CLARIFICATIONS TO THE GTC**

#### **Additions to the GTC:**

**Approvals.** Any agreement arising out of this offer may be subject to the approval of the Department of the Attorney General as to form, and is subject to all further approvals, including the approval of the Governor, required by statutes, regulation, rule, order, or other directive.

#### **Amendments to the GTC:**

**Subsection 2.1 Competency of Offeror.** Paragraph one is rescinded and replaced with the following:

"Prospective Offeror must be capable of performing the work for which offers are being called. Either before or after the deadline for an offer, the purchasing agency may require Offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to the ability of the Offeror to furnish satisfactorily the goods

or services being solicited by the STATE. Any such inquiries shall be made and replied to in writing; replies shall be submitted over the signatures of the person who signed the offer. Any Offeror who refuses to answer such inquired will be considered non-responsive."

**Subsection 2.5 Preparation of Offer.** Paragraph four is rescinded and replaced with the following:

"An Offeror may submit only one offer in response to a solicitation. If an Offeror submits more than one offer in response to a solicitation, then all such offers shall be rejected. Similarly, an Offeror may submit only one offer for each line item (if any) of a solicitation. If an Offeror submits more than one offer per line item, then all offers for that line item shall be rejected."

**Subsection 3.1(B) Preference for Hawaii Products.** GTC §3.1(B), paragraphs one and two only are rescinded and replaced with the following: "A purchasing agency shall review all specifications in a bid or proposal for purchase from the Hawaii products (HP) list where these products are available; provided that the products: Meet the minimum specifications and the selling price f.o.b. jobsite; unloaded, including applicable general excise tax and use tax, does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; and unloaded, including applicable general excise tax and use tax, does not exceed the lowest delivered price of a similar non-HP by more than: three per cent where class I HP are involved; five per cent where class II HP are involved; or ten per cent where class III HP are involved.

All persons submitting bids or proposals to claim HP preference shall designate in their bids which individual product and its price is to supplied as a HP.

Where a bid or proposal contains both Hawaii and non-HP, then for the purpose of selecting the lowest bid or purchase price only, the price bid or offered for a HP item shall be decreased by subtracting from: three per cent, five per cent, or ten per cent for the class I, class II, or class III HP items bid or offered, respectively. The lowest total bid or proposal, taking the preference into consideration, shall be awarded the contract unless the bid or offer provided for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of the preferences."

**Subsection 3.1(C) Printing Preference.** GTC §3.1(C), paragraphs one and two are rescinded and replaced with the following: "All bids or proposals submitted for a printing, binding, or stationery contract in which all work will be performed in-state, including all preparatory work, presswork, bindery work, and any other product-related work shall receive a fifteen per cent reference for purposes of bid or proposal evaluation.

Where bids or proposals are for work performed in-state and out-of-state, then for the purpose of selecting the lowest bid or evaluating proposals submitted only, the amount bid or proposed for work performed out-of-state shall be increased by fifteen per cent. The lowest total offer, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount awarded, however, shall be the amount of the price offered, exclusive of the preference.

**Clarification to the GTC:**

**Subsection 2.8 Certification Offeror Concerning Wages, Hours and Working Conditions of Employees Supplying Services.** Section 103-55, HRS, amended by Act 149, SLH 1999, now applies to service contracts in excess of \$25,000 and also excludes professional personnel.



**GTCs Not Applicable.** Subsections 2.11 and 2.14 of the GTC that apply specifically to the RFP method of source selection are not applicable to IFBs. Also, subsections 2.10 and 2.13 that apply specifically to the IFB method of source selection are not applicable to RFPs.

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period

not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of



supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
  - (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
  - (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

- (A) Changes in the work within the scope of the Contract; and
  - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
  - (5) Method of shipment or packing of supplies; or
  - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.
28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
  - (2) Driver's license number or Hawaii identification card number; or
  - (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or



- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.